IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10507 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PUSHPABEN CHHAGANBHAI MISTRI - Petitioner(s)
Versus
GUJARAT REVENUE TRIBUNAL & 2 - Respondent(s)

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Appearance :
MR JAGDISH MEHTA for MR YOGESH S LAKHANI for Petitioners
MS.NM PARIKH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/03/2007

ORAL JUDGMENT

1. Shri Jagdish Mehta under the authority of Shri Y.S.Lakhani, learned counsel for the

petitioners; Ms. N.M.Parikh, learned AGP for the respondents. The parties are finally heard.

2. By the present petition, the petitioners seek to challenge the correctness, validity and propriety of the order passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.B.S.29/92 decided on 20.7.93, whereunder the order dated 18.11.91 passed by the Deputy Collector, Surat in Ceiling Revision Case No. 3/91 reversing the order dated 2.1.87 passed by the Additional Mamlatdar cum ALT in Ceiling Case No. 90 has been confirmed.

3. The short facts necessary for disposal of the present writ application are that the petitioner held 16 Hectares 58 Are and 88 sq.mts. land which undisputedly was allotted in his favour by the State Government. On coming into effect of the Gujarat Agricultural Lands Ceiling Act, 1960, the petitioner submitted his return and claimed that he was entitled to two units as he was residing with his father and that father would be deemed to be a member of the family, because, the father was depending upon the

petitioner. The matter was heard by one authority or the other, and it was finally remanded to the Court of Mamlatdar cum ALT. By order dated 2.1.87, Additional Mamlatdar cum ALT held that the petitioner's entitlement was to hold 24 Hectares 28 Are and 12 sq.mts. of land and as he was possessed of 16 Hectare 58 Are and 88 sq.mts., land could not be declared as surplus. The matter was taken up in revision and the revisional authority held that the father would not be entitled to an unit if the property belongs to his son. The Deputy Collector accordingly set aside the order passed by the Additional Mamlatdar cum ALT and held that the petitioner was in possession of excess land. Validity of the said order declaring 4 Hectare 44 Are and 82 sq.mts as excess land was challenged before the Tribunal, but the Tribunal also confirmed the said order. Shri Mehta, learned counsel for the petitioner submits that Section 6 would provide absolute protection to the petitioner, because, father being a member of the family and also a dependent upon the son

would be entitled to one unit. He submits that if father and son are entitled to one unit each, i.e. 30 Acres each then 16 Hectares 58 Are and 88 sq.mts land possessed by the petitioner could not be held to be in excess of the ceiling limit.

4. Section 6 of the Gujarat Agricultural Lands Ceiling Act provides that if a person holds land as an individual, then, his spouse and minor sons would be taken to be members of his family and if the family includes a major son, then, such major son would be entitled to a separate unit. Section 6 in fact, says that the property held by father would be shared by his children and spouse and not otherwise. Section 6 does nowhere say that if the son is the allottee and is the sole owner of the property, then, father would be entitled to one unit in the son's property.

5. After going through the provisions of law and the orders passed by the subordinate authorities, I am of the opinion that present is not a case wherein any interference is

called for. The petition is dismissed. Rule is discharged. No costs. Interim relief, if any is vacated.

[R.S. GARG, J.]

pirzada/-